

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BLACK & DECKER INC. and)	
BLACK & DECKER (U.S.) INC.,)	
)	
Plaintiffs,)	
)	No. 04 C 7955
v.)	
)	
ROBERT BOSCH TOOL CORPORATION,)	
)	
Defendant.)	

FINAL JURY INSTRUCTIONS

Functions Of The Court And Jury

Ladies and gentlemen, now that you have heard all of the evidence and the arguments of the attorneys, it is my duty to instruct you on the law that applies in this case. A copy of these instructions will be available to each of you in the jury room for you to consult if you find it necessary.

It is your duty to find the facts from all of the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You must not be influenced by any personal likes or dislikes, personal opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of this case.

What Is Evidence

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness, including that offered by deposition;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the lawyers have agreed or stipulated.

What Is Not Evidence

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case

- (1) statements and arguments of the attorneys,
- (2) questions and objections of the attorneys,
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what you see or hear is done or said by one of the parties or by one of the witnesses.

Charts And Summaries Received In Evidence

Certain charts and summaries have been received into evidence to illustrate information brought out in the trial. Charts and summaries are only as good as the underlying evidence that supports them. You should, therefore, give them only such weight as you think the underlying evidence deserves.

Charts And Summaries Not Received In Evidence

Certain charts and summaries that have not been received in evidence have been shown to you in order to help explain the contents of books, records, documents or other evidence in the case. They are not themselves evidence or proof of any facts. If they do not correctly reflect the facts or figures shown by the evidence in the case, you should disregard these charts and summaries and determine the facts from the underlying evidence.

Direct And Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Credibility Of The Witnesses

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things, the witness's intelligence; the ability and opportunity the witness had to see, hear, or know the things that the witness testified about, the witness's memory, any interest, bias or prejudice the witness may have; the manner of the witness while testifying, and the reasonableness of the witness's testimony in light of all the evidence in the case.

Opinion Evidence -- Expert Witnesses

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for those opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves.

Use Of Notes

Some of you have taken notes during trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory.

Impeachment of Witnesses

A witness may be discredited or “impeached” by contradictory evidence, by, among other things, a showing that he or she testified falsely concerning a material matter, or by evidence that at some other time the witness has said or done something that is inconsistent with the witness’s testimony.

If you believe that any witness has been impeached, then you must determine whether to believe the witness’s testimony in whole, in part, or not at all, and how much weight to give to that testimony.

Common Sense

You should use common sense in considering the evidence, and you should consider the evidence in light of your own observations in life. In our lives, we often look at one fact and conclude from that fact that another fact exists. In law we call this an “inference.” You are allowed to make reasonable inferences. Any inferences that you make must be reasonable and must be based on the evidence in the case.

Duty to Object

It is the duty of the attorneys on each side to object when the other side offers testimony and evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

By allowing the testimony or other evidence to be introduced over the objections of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. On the other hand, where the Court sustained an objection to a question addressed to a witness, you must disregard the statement entirely. You may draw no inference from the wording of it or speculate as to what the witness would have said had he or she been permitted to answer the question.

Deposition And Videotape Testimony

During the trial, certain testimony was read to you by way of deposition or shown to you by videotape, consisting of recorded answers under oath to questions asked of witnesses in advance of trial by one or more of the attorneys for the parties. The testimony of a witness who for some reason was not present to testify from the witness stand may be presented in writing under oath in the form of a deposition.

Such testimony is entitled to the same consideration and is to be judged as to credibility and weight and otherwise considered by you as far as possible in the same way as if the witness had been present and testified from the witness stand.

Burdens of Proof

As I told you at the beginning of this trial, facts must be proved by a required weight of the evidence, known as the burden of proof. In a civil case such as this, there are two different burdens of proof that are used. The first is called preponderance of the evidence, or the “more probable than not” standard. The second is called clear and convincing evidence, or the “highly probable” standard.

When a party has the burden of proof by a preponderance of the evidence, it means you must be persuaded that what the party seeks to prove is more probably true than not true. Put in another way, if you were to put the evidence for and against the party who must prove the fact on the opposite sides of a scale, a preponderance of the evidence requires that the scale tip in favor of the party who has the burden of proof.

The clear and convincing evidence burden is a heavier one. When a party has the burden of proof by clear and convincing evidence, it means you must be persuaded that it is highly probable that what the party seeks to prove is true. In other words, if you were to put the evidence for and against the party who must prove the fact on opposite sides of a scale, clear and convincing evidence requires that the scale tip heavily toward the party who has the burden of proof.

You may have heard of a burden of proof that is used in criminal cases called “beyond a reasonable doubt.” That requirement is the highest burden of proof. It does not apply to a patent case such as this one, and you should, therefore, put it out of your mind.

The Parties and Their Contentions

I will now review for you the parties in this action and the positions of the parties that you will have to consider in reaching your verdict.

Black & Decker Inc. is a Delaware corporation having its principal place of business in Towson, Maryland. Black & Decker (U.S.) Inc. is a Maryland corporation having its principal place of business in Towson, Maryland. Robert Bosch Tool Corporation is a Delaware corporation having its principal place of business in Mt. Prospect, Illinois.

In this case, we will be concerned with claims 1, 2, 6, 7 and 10 of the '059 patent and claims 1, 2 and 10 of the '925 patent.

Black & Decker, the plaintiff in this case, contends that Bosch, the defendant in this case, is infringing the asserted claims of the patents by manufacturing, selling, using, offering for sale and/or importing the Bosch Power Box™ job-site radio. Black & Decker contends that it is entitled to damages caused by that infringement.

Bosch denies that they are infringing the '059 and '925 patents and contends that the asserted claims of the two patents are invalid.

You must decide whether Black & Decker has proved infringement of any of these claims by a preponderance of the evidence. You also must decide whether Bosch has proved by clear and convincing evidence that any of these claims are invalid. If you find infringement of any valid claim, you must decide the amount of damages that is necessary to compensate Black & Decker for the infringement that has occurred.

The Patent System

At the beginning of the trial, I gave you some general information about patents and the patent system and a brief overview of the patent laws relevant to this case. You also viewed a video about the United States patent system and how patents are obtained. I will now give you more detailed instructions about the patent laws that specifically relate to this case. If you would like to review my instructions at any time during your deliberations, they will be available to you in the jury room.

The Claims of the Patents In Suit

As I told you at the beginning of the trial, the claims of a patent are the numbered sentences at the end of the patent. The claims describe the invention made by the inventor and describe what the patent owner owns and what the patent owner may prevent others from doing.

Claims are usually divided into parts called "limitations." For example, a claim that covers the invention of a table may recite the tabletop, four legs and the glue that secures the legs to the tabletop. The tabletop, legs and glue are each a separate limitation of the claim.

Construction of the Claims

In deciding whether or not an accused product infringes a patent, the first step is to understand the meaning of the words used in the patent claims.

It is my job as Judge to determine what the patent claims mean and to instruct you about that meaning. You must accept the meanings I give you and use them when you decide whether or not the patent is infringed, and whether or not it is invalid.

Before I instruct you about the meaning of the words of the claims, I will explain to you the different types of claims that are at issue in this case.

It may be helpful to refer to the copies of the patents that you have been given as I discuss the claims at issue here. The claims are at the end of the patents. I will be giving you a list of the claims of the '059 and '925 patents at issue as part of the verdict form when I conclude my instructions.

Independent and Dependent Claims

Patent claims may exist in two forms, referred to as independent claims and dependent claims. An independent claim does not refer to any other claim of the patent. Thus it is not necessary to look at any other claim to determine what an independent claim covers. Claim 1 of the '059 patent, for example, is an independent claim.

A dependent claim refers to at least one other claim in the patent. A dependent claim includes each of the limitations of the other claim or claims to which it refers, as well as the additional limitations recited in the dependent claim itself. Therefore, to determine what a dependent claim covers, it is necessary to look at both the dependent claim and the other claim or claims to which it refers.

For example, claim 2 of the '059 patent is a dependent claim. It refers to claim 1. To determine what dependent claim 2 covers, the words of that claim and the words of claim 1 must be read together.

Means-Plus-Function Claim Limitation

Some patent claim limitations may describe a “means” for performing a function, rather than describing the structure that performs the function. For example, let’s say that a patent describes a table in which the legs are glued to the tabletop. One way to claim the table is to recite the tabletop, four legs and glue between the legs and the tabletop. Another way to claim the table is to recite the tabletop and the legs, but, rather than recite the glue, recite a “means for securing the legs to the tabletop.” This second type of claim limitation is called a “means-plus-function” limitation. It describes a means for performing the function of securing the legs to the tabletop, rather than expressly reciting the glue.

When a claim limitation is in means-plus-function form, it covers the structures described in the patent specification for performing the function stated in the claim, and also any structure that is equivalent to the described structures. In our example, the claim covers a table using glue to secure the legs to the tabletop, as described in the patent, and any equivalent structure that performs the function of securing the legs to the tabletop.

Claim 10 of the ‘925 patent includes means-plus-function limitations. In instructing you about the meaning of a means-plus-function claim limitation, I will tell you, first, the function that each of the means-plus-function claim limitations performs; and second, the structure disclosed in the patent specification that corresponds to each means-plus-function limitation.

“Comprising” Claims

The beginning portion, or preamble, of each of the independent claims of the patents in suit uses the word “comprising.” “Comprising” means “including” or “containing.” A claim that uses the word “comprising” or “comprises” is not limited to products having only the elements or steps that are recited in the claim, but also covers products that add additional elements or steps.

Let’s take our example of the claim that covers a table. If the claim recites a table “comprising” a tabletop, legs and glue, the claim will cover any table that contains these structures, even if the table also contains other structures, such as a leaf or wheels on the legs.

Limitations of the Claims at Issue

I will next define the meaning of some of the words used in the patent claims at issue. You must use the definitions I provide to you in your consideration of infringement and invalidity issues.

The term “radio” in claim 1 of the ‘059 patent and claims 1 and 2 of the ‘925 patent means “a radio receiver and an audio output component.”

The term “radio receiver for receiving radio signals and generating audio output signals responsive thereto” in claim 1 of the ‘059 patent and claims 1 and 2 of the ‘925 patent means “a portion of the radio for receiving radio signals and converting the signals to audio output signals.”

The term “an AC powered DC power supply disposed in said enclosure for powering said radio and generating a first DC output voltage having a magnitude sufficient to power said radio” in claim 1 of the ‘059 patent means “a direct current power supply in the enclosure powered by alternating current that generates a direct current output voltage sufficient to power the radio.”

The term “a power conversion circuit” in claim 1 of the ‘059 patent and claims 1 and 2 of the ‘925 patent means “a circuit that changes electrical energy.”

The term “first converter circuit for receiving” in claim 2 of the ‘059 patent means “a circuit included as part of the power conversion circuit.”

The term “power tool” in claim 6 of the ‘059 patent means “an electrically powered tool.”

The term “an AC powered DC charger for powering said radio and charging a removable DC voltage power source” in claims 1 and 2 of the ‘925 patent means “a direct current charger powered by alternating current that is capable of powering the radio and is capable of charging the removable direct current voltage power source.”

The term “radio receiver means for receiving radio signals and generating electronic audio output signals responsive thereto” in claim 10 of the ‘925 patent is a means-plus-function claim term where the claimed function is “receiving radio signals and generating electronic audio output signals responsive thereto” and the claimed structure is “the radio circuit board disclosed as item 33 in Figures 6 and 7, and any equivalent thereof.”

The term “ventilation opening” in claim 10 of the ‘925 patent means “an opening in the enclosure to provide for reducing the buildup of heat, fumes, or vapor, within the radio enclosure.”

The term “first power source including an electrical cord engageable with an electrical outlet” in claim 10 of the ‘925 patent means “a power source having an electric cord engageable with an electrical outlet.”

The term “adapter” in claim 10 of the ‘925 patent means “a device for transforming the contact configuration of a battery pack so as to connect parts that will not otherwise mate.”

The Court construes “charger” in claim 10 of the ‘925 patent as “charger,” having its plain and ordinary meaning, which is an apparatus used to charge storage batteries.

Patent Infringement Generally – Direct Infringement

A patent owner has the right to stop others from using the invention covered by its patent claims during the life of the patent. If any person makes, uses, sells, offers to sell or imports what is covered by the patent claims without the patent owner's permission, that person is said to infringe the patent. This type of infringement is called "direct infringement." In addition to enforcing a patent against a direct infringer, a patent owner also has the right to enforce the patent against those who are known as "indirect infringers."

In reaching your decision on infringement, keep in mind that only the claims of a patent can be infringed. You must compare the following patent claims, using the terms I defined, to the Bosch Power Box™ job-site radio, and determine whether or not there is direct infringement of the following claims:

Claims 1, 2, 6, 7 and 10 of the '059 patent.

Claims 1, 2 and 10 of the '925 patent.

You should not compare Bosch's product with any specific example set out in those patents, or with Black & Decker's product. The only correct comparison is with the language of the claim itself, as I have explained its meaning to you.

You must consider each claim individually and must reach your decision as to each assertion of infringement based on my instructions about the meaning and scope of the claim terms I have defined while giving the remaining claim terms their plain and ordinary meaning. You must also consider the legal requirements for infringement, and the evidence presented to you by the parties. I will first discuss direct infringement.

Whether or not Bosch knew that what it was doing was an infringement does not matter. A person may be found to be a direct infringer of a patent even if he or she believes in good faith that what he or she is doing is not an infringement of any patent, and even if he or she does not even know of the patent.

In this case, Black & Decker asserts that Bosch's Power Box™ job-site radio directly infringes the asserted claims of the '059 and '925 patents. It is your job to determine whether or not Black & Decker has proved by the more probable than not standard that defendant has directly infringed any of the asserted claims of the '059 and '925 patents.

Literal Infringement

To infringe a patent claim, the product must include every limitation of the claim. If Bosch's Power Box™ job-site radio does not have even a single structure recited in a claim, then you must find that Bosch has not infringed that claim. You must consider each of the asserted patent claims separately.

A claim limitation is present in an accused product if it exists in the accused product just as it is described in the claim language, either as I have explained that language to you or, if I did not explain it, as you understand it.

Patent Infringement – Infringement Of One Claim Is Sufficient

Each of the claims must be considered individually, and not all claims of a patent have to be infringed for the patent to be infringed. To prove patent infringement, Black & Decker need only establish by a preponderance of the evidence that one claim is infringed.

Infringement - Means-Plus-Function Limitations

As I told you, a means-plus-function claim limitation describes a means for performing a particular function. To prove that an accused product includes a structure that is covered by a means-plus-function limitation, a patent owner must prove two things by the more probable than not standard: first, that the accused product contains a structure that performs the identical function to the function recited in the means-plus-function limitation; and second, that the structure of the accused product that performs that function is either identical or equivalent to the corresponding structure disclosed in the patent specification.

Whether or not the structure of the accused product is equivalent to the structure disclosed in the patent is decided from the perspective of a person of ordinary skill in the field of the invention. A person of ordinary skill is a person of average education and training in the field. A structure is equivalent if such an ordinary skilled person would consider the differences between the accused structure and the structure in the patent to be insubstantial.

One way of determining whether the structure of the accused product is equivalent to the structure disclosed in the specification is to determine whether or not persons of ordinary skill in the field of the invention believe that the structure disclosed in the specification and the structure of the accused product are interchangeable. Another way is to determine whether or not the accused structure performs the identical function, in substantially the same way, to achieve substantially the same result.

Let's go back to our example of the claim reciting three limitations – first, a tabletop, second, legs and third, a means for securing the legs to the tabletop. The third limitation is the means-plus-function portion of the claim. The patent in our example discloses glue to secure the legs to the tabletop. Let's assume that the accused device uses nails. They both perform the claimed function of securing the legs to the tabletop. The fact that nails and glue are different does not mean that, under the patent laws, they may not be equivalent. Whether or not they are equivalent depends on such things as whether the glue is important to the invention claimed in the patent, whether those skilled in the art of table-making would consider the glue and nails to be interchangeable, and whether in the patent or prosecution history the two are referred to as equivalent.

Determination of Infringement

Taking each claim of the '059 and '925 patents separately, if you find that Black & Decker has proved that it is more probable than not that each and every limitation of a claim are present in Bosch's Power Box™ job-site radios, then you must find that the making or using of Bosch's Power Box™ job-site radio infringes that claim.

Infringement of Dependent Claims

My instructions on infringement so far have related to independent claims. As I told you, the '059 and '925 patents also contain dependent claims. A dependent claim includes each of the limitations of the independent claim to which it refers, plus additional elements.

The dependent claims asserted in this lawsuit are the following:

claims 2, 6, 7, and 10 of the '059 patent, which depend from independent claim 1 of the '059 patent

If you find that the pertinent independent claim has been infringed, you must separately determine whether the foregoing dependent claims have also been infringed. If you find that the pertinent independent claim is not infringed, then you must also find that any dependent claims that depend from that independent claim are not infringed.

Infringement and Improvements to Patented Invention

Bosch has presented evidence that its Power Box™ job-site radio has improvements not described in the patent claims. Proof of this fact does not necessarily mean that the accused products do not infringe Black & Decker's patent claims. The tests for infringement remain as I have instructed you. As long as you find that Bosch's accused products include all of the limitations of at least one of the asserted patent claims, then you must find that that asserted patent claim is infringed by the making, selling, offering for sale, using and/or importing the Bosch's Power Box™ job-site radio.

Indirect Infringement

As I have told you, in addition to enforcing a patent against a direct infringer, a patent owner may also enforce the patent against indirect infringers. The act of encouraging or inducing others to infringe a patent is called "inducing infringement."

There can be no indirect infringement unless someone is directly infringing the patent. Thus, in order to prove that Bosch is inducing another person to infringe or contributing to the infringement of another, Black & Decker must prove that it is more probable than not that the other person is directly infringing at least one claim of the patent.

In this case, in addition to direct infringement, Black & Decker also accuses Bosch of inducing infringement of claims 1, 2, 6, 7 and 10 of the '059 patent and claims 1, 2 and 10 of the '925 patent. Black & Decker must prove that it is more probable than not that Bosch has induced the infringement of any of these claims.

Inducing Patent Infringement

A person induces patent infringement if he or she purposefully causes, urges or encourages another to infringe a patent. Inducing infringement cannot occur unintentionally. This is different from direct infringement, which, as I've just told you, can occur unintentionally. To prove inducement, the patent owner must prove that it is more probable than not that the accused inducer knew of the patent and encouraged or instructed another person to use a product in a manner that infringes the patent. The patent owner must also prove that it is more probable than not that the other person infringed the patent. A person can be an inducer even if he or she thought that what he or she was encouraging or instructing the other person to do was not an infringement.

In addition to direct infringement, Black & Decker contends that Bosch also induces infringement of claims 1, 2, 6, 7 and 10 of the '059 patent and claims 1, 2 and 10 of the '925 patent. To prove inducement, Black & Decker must prove four things by the more probable than not standard:

First, Bosch encouraged or instructed another person how to use the Bosch Power Box™ job-site radio in a manner that you, the jury, find infringes the asserted patent claims.

Second, Bosch knew of the asserted patents.

Third, Bosch knew or should have known that its encouragement or instructions would likely result in the other person doing that which you find to be an infringement of the asserted patent claims.

Fourth, the other person infringed the asserted patents.

If, and only if, you are persuaded of each of these four things may you find that Bosch induced patent infringement of the asserted patent claims.

Contributory Infringement

Contributory infringement can occur when a supplier provides a part, or a component, to another for use in a patented product or machine, or in a patented process. In order for there to be contributory infringement, the person who received the component must infringe the patent. The component must also have certain characteristics. First, the component must be a material part of the invention. Second, the component must be especially made or adapted for use in a manner that infringes the patent, and the supplier must know that the component was especially made for that use. Third, the component must not have a substantial use that does not infringe the patent. A component that has a number of non-infringing uses is often referred to as a staple or commodity article. Providing such a staple or commodity article is not contributory infringement, even if the person to whom the article was supplied uses it in an infringing manner.

In this case, Black & Decker asserts that Bosch's selling or supplying a part or a component is contributing to the infringement of the claims of the '059 and '925 patents. In order to establish that Bosch has contributorily infringed claims of the '059 and/or '925 patents, Black & Decker must prove five things by the more probable than not standard. These five things are:

First, Bosch knew of the '059 and/or '925 patents.

Second, the part or component is a material component of the claimed invention and Bosch sold or supplied that component.

Third, Bosch knew that the component was especially made for use in a manner that infringes the patent claims.

Fourth, the component is not a staple or commodity article.

Fifth, the component was actually used in a manner that you find infringes the '059 and/or '925 patents.

Willful Infringement

Black & Decker also contends that Bosch has willfully infringed the '059 and '925 patent claims. If you find on the basis of the evidence and the laws as I have explained it, that Bosch directly or indirectly infringes at least one claim of the '059 and '925 patents, you must then decide whether or not Bosch's infringement was willful.

When a person becomes aware that a patent may have relevance to his or her activities, that person has a duty to exercise due care and investigate whether or not his or her activities or proposed activities infringe any valid claim of the patent. If that person did not do this and is found to have infringed the patent claims, then the infringement was willful.

The issue of willful infringement is relevant, not to your decision of whether or not there is infringement, but rather to the amount of damages to which Black & Decker is entitled. A finding of willful infringement may, in certain circumstances, entitle the patent owner to increased damages. If you decide that Bosch willfully infringed the '059 and '925 patents' claims, then it is my job to decide whether or not to award increased damages to Black & Decker.

Although, as I explained before, Black & Decker must prove infringement by the more probable than not standard, the burden of proving that the infringement was willful is the highly probable standard.

To establish willful infringement, Black & Decker must prove two things by the highly probable standard. First, Black & Decker must prove that Bosch was aware of the '059 and '925 patents. Second, Black & Decker must prove that Bosch proceeded with the activities that are accused of infringement without a good faith belief that the patent was either invalid, not infringed, or both.

Another factor you should consider in determining willfulness is whether or not, in designing the Bosch Power Box™ job-site radio, Bosch copied the disclosures of the '059 and '925 patents, or whether or not Bosch instead tried to "design around" the patent by designing the Bosch Power Box™ job-site radio that Bosch believed did not infringe the patent claims. Evidence of copying a patent is evidence of willful infringement. On the other hand, evidence that Bosch attempted to avoid infringement by designing around the patent claims, even if that attempt was unsuccessful, is evidence that infringement was not willful.

The fact that you may have determined that Bosch was wrong and that the '059 and '925 patents are infringed does not mean that Bosch's infringement was willful. All that is required to avoid a finding of willful infringement is that Bosch had a good faith belief that it did not infringe or that the patent was invalid, and that Bosch's belief was reasonable under all of the circumstances.

Validity in General

Each of the claims of the '059 and '925 patents (whether in independent or dependent form) is presumed to be valid, independent of the validity of the other claims. Bosch has the burden of proving invalidity by clear and convincing evidence.

Only a valid patent may be infringed. For a patent to be valid, the invention claimed in the patent must be new, useful and non-obvious. A patent cannot take away from people their right to use what was known or what would have been obvious when the invention was made. The terms "new" and "non-obvious" have special meanings under the patent laws. I will explain these terms to you as we discuss Bosch's grounds for asserting invalidity.

Bosch has challenged the validity of the '059 and '925 patent claims on a number of grounds. Bosch must prove that a patent claim is invalid by the highly probable standard.

I will now explain to you each of Bosch's grounds for invalidity in detail. In making your determination as to invalidity, you should consider each claim separately.

The Prior Art

Under the patent laws, a person is entitled to a patent only if the invention claimed in the patent is new and unobvious in light of what came before. That which came before is referred to as the "prior art."

Bosch is relying on various items that Black& Decker does not agree are prior art. Bosch must prove by the highly probable standard that these items are prior art. In order to do so, Bosch must prove that these items fall within one or more of the different categories of prior art recognized by the patent laws. These categories include:

First, anything that was publicly known or used in the United States by someone other than the inventor before the inventor made the invention.

Second, anything that was in public use or on sale in the United States more than one year before the application for the patent was filed. In this case, the filing date for the '059 and '925 patents was December 12, 1997.

Third, anything that was patented or described in a printed publication anywhere in the world before the inventor made the invention, or more than one year before the application for the patent was filed.

Fourth, anything that was described in a patent that issued from a patent application filed in the United States before the inventor made the invention.

Prior Art – Date of Invention

Many of the different categories of prior art refer to the date at which the inventor made the invention. This is called the “date of invention”.

I will now explain to you how to determine this date.

There are two parts to the making of an invention. The first part occurs when the inventor has the idea of the invention. This is referred to as “conception” of the invention. A conception of an invention is complete when the inventor has formed the entire idea of how to make and use every aspect of the claimed invention, and all that is required is that it be made without the need for any further inventive effort.

The second part occurs when the inventor makes the invention. The actual making of the invention is referred to as “actual reduction to practice”. An invention is said to be “actually reduced to practice” when it is made and shown to work for its intended purpose.

Under the patent laws, the date of invention is generally the date that the patent application was filed. Filing a patent application is also referred to as a “constructive reduction to practice.” In this case, the constructive reduction to practice date for the ‘059 and ‘925 patents is December 12, 1997. Ordinarily, art dated before the application filing date is prior art to the patent claims.

There are, however, two circumstances under which art dated before the application filing date is not prior art. The first occurs when the inventor of the patent actually reduced the invention to practice before the date of the art. Art dated after the reduction to practice is not prior art to the patent claims.

The second circumstance under which art dated before the application filing date is not prior art occurs when the inventor conceived of the invention before the date of the prior art **and** exercised reasonable diligence from just before the date of the art up to the date of the inventor’s reduction to practice. In that case, art dated after the conception date is not prior art to the patent claims.

Remember, reduction to practice occurs either as of the filing date of the patent application or when the invention was actually made and worked for its intended purpose. Reasonable diligence means that the inventor worked continuously on reducing the invention to practice. Interruptions necessitated by the everyday problems and obligations of the inventor or others working with him or her do not prevent a finding of diligence.

Prior Art – Prior Patents and Patent Applications

An issued patent may be prior art to a patent claim under a number of different circumstances.

First, a patent issued anywhere in the world, like a printed publication, may be prior art to a patent claim if the patent issued either before the inventor made the claimed invention, or more than one year before the application for the patent was filed. In this case, the '059 patent and '925 patents were filed on December 12, 1997.

If a patent issued anywhere in the world more than one year before the application for the patent was filed, then that patent is prior art, regardless of the date of invention of the claimed invention.

Second, a U.S. patent or published U.S. patent application may also be prior art to a patent claim, even if the patent issued or the patent application was published after the date of invention of a claimed invention. This occurs when the patent application for the U.S. patent was filed by another person before the inventor made the claimed invention.

In this case, Bosch relies on the following as alleged prior art patents to the '059 and '925 patents and contends that they were filed and issued on the following dates:

1. U.S. Patent No. 4,645,996, filed on 10/25/85 and issued on 02/24/87 ;
2. U.S. Patent No. 5,172,043, filed on 04/03/91 issued on 12/15/92 ;
3. U.S. Patent No. 5,235,822, filed on 07/01/92 issued on 08/17/93 ;
4. U.S. Patent No. 5,187,422, filed on 07/31/91 issued on 02/16/93 ;
5. U.S. Patent No. 5,752,205, filed on 07/24/97 issued on 05/12/98 ;
6. U.S. Patent No. 5,633,096, filed on 01/19/96 issued on 05/27/97 ;
7. U.S. Patent No. 5,810,168, filed on 05/09/97 issued on 08/22/98 ; and
8. U.S. Patent No. 5,945,806, filed on 08/29/97 issued on 08/31/99 .

Prior Art – Prior Printed Publication

Printed publications from anywhere in the world are prior art if the printed publications were published, either before the inventor made the claimed invention or more than one year before the application for the patent was filed. In this case, the '059 patent and '925 patents were filed on December 12, 1997.

A document is a printed publication if it was reasonably accessible to that portion of the public most likely to use it. It is not necessary that the publication be available to every member of the public. Thus, publications may include not only such things as books, periodicals or newspapers, but also publications that are not as widely available to the public, such as trade catalogues, journal articles or scholarly papers that are distributed or available to those skilled in the field of the invention.

The date that a printed publication becomes prior art is the date that it becomes available to the public. Published patent applications are printed publications as of their publication dates.

If a printed publication was published more than one year before the application for the patent was filed, then that publication will be prior art, regardless of the date of invention for the patent claims. The date of invention is irrelevant if the printed publication was published more than one year before the application for the patent was filed.

In this case, Bosch relies on the following as alleged prior printed publications to the '059 and '925 patent claims, and contends they were published on the following dates:

1. An article entitled "Manpack: A New Solution To An Old Problem" by A. H. Bellman, Jr. and R. A. Caton, published in Signal magazine in 1977;
2. The manual entitled "Grundig Satellit 700 World Receiver";
3. The article entitled "The Great Grundig Satellit 700," by T. Ba1er, published in 2002;
4. The textbook entitled "The Art Of Electronics," by P. Horowitz and W. Hill published in 1989;
5. The reference Book "Printed Circuits Handbook," by C. Coombs, published in 1988;
6. The manual entitled "Radio Sets SCR-509-A and SCR-510-A" dated August 14, 1942;
7. Military Radio Sets R109 And R-110;
8. Linear Technology Lt1 512 Datasheet published in 1996;
9. Design Notes "Versatile Low Power SEPIC Converter Accepts Wide Input Voltage Range" and "UC2577 Easy Switcher Controls SEPIC Converter For Automotive Applications," By Jack Palczynski dated 1995-1996;
10. Application Note "A Unique Converter Configuration Provides Step-Up/down Functions" with a copyright date of 1983; and

11. Publications "Makita General Catalog, 1996-1997" And "Black & Decker Versapak Catalog".

Prior Art – Prior Public Use or Knowledge

The prior public use of a claimed invention may be prior art to the patent claims under two different circumstances. The first is where the invention was known to or used by someone other than the inventor before the date of invention by the inventor on the patent. The second is where the invention was publicly used by the inventor, the patent owner, or anyone else more than one year before the application for the patent was filed. In both circumstances, the public use must have been in the United States. Prior public use or knowledge of the claimed invention outside the United States is not prior art to a patent claim.

Use or knowledge by someone other than the inventor may be prior art if it was before the date of invention by the inventor on the patent, or more than one year before the filing of the application for the patent. In either case, a prior use by someone other than the inventor or the patent owner will not be prior art unless it was public. Private or secret knowledge or use by another is not prior art.

If the prior use was more than one year before the filing date of the application for the patent, then the date of invention for the patent claims is irrelevant. A public use more than one year before the patent application was filed will be prior art regardless of the date of invention.

A prior use more than one year before the application filing date by the inventor or the patent owner will be prior art if it was for commercial purposes, even if it was done in secret.

You may rely on multiple sources of evidence to prove what was in public use more than one year before the application filing date.

Anticipation/Lack of Novelty

A person cannot obtain a patent on an invention if someone else has already made the same invention. In other words, the invention must be new. If an invention is not new, we say that it was “anticipated” by the prior art. An invention that is “anticipated” by the prior art is not entitled to patent protection. A party challenging the validity of a patent must prove anticipation by the highly probable standard.

In order for a patent claim to be anticipated by the prior art, each and every limitation of the claim must be present within a single item of prior art, whether that prior art is a publication, a prior patent, a prior invention, a prior public use or sale, or some other item of prior art. You may not find that the prior art anticipates a patent claim by combining two or more items of prior art.

A printed publication or patent will not be an anticipation unless it contains a description of the invention covered by the patent claims that is sufficiently detailed to teach a skilled person how to make and use the invention without undue experimentation. This means that a person skilled in the field of the invention reading the printed publication or patent would be able to make and use the invention using only a small amount of experimentation that is appropriate for the complexity of the field of the invention and for the level of expertise and knowledge of persons skilled in that field.

In deciding whether or not a single item of prior art anticipates a patent claim, you should consider that which is expressly stated or present in the item of prior art, and also that which is inherently present. Something is inherent in an item of prior art if it is always present in the prior art or always results from the practice of the prior art, and if a skilled person would understand that to be the case.

A prior public use by another may anticipate a patent claim, even if the use was accidental or was not appreciated by the other person. Thus, a prior public use may anticipate an invention even if the user did not intend to use the invention, or even realize he or she had done so.

Against this background, you must decide whether or not the inventions covered by the patent claims are anticipated by any of the prior art I previously listed for you.

Obviousness

As I mentioned earlier, an inventor is not entitled to a patent if his or her invention would have been obvious to a person of ordinary skill in the field of the invention at the time the invention was made.

Unlike anticipation, obviousness may be shown by considering more than one item of prior art. The question is, would it have been obvious for a skilled person who knew of the prior art to make the claimed invention? If the answer to that question is yes, then the patent claims are invalid. Bosch has the burden of proving by the highly probable standard that any of the asserted claims of the patents in suit is invalid for obviousness.

Obviousness is determined from the perspective of a person of ordinary skill in the field of the invention. The issue is not whether the claimed invention would have been obvious to you, to me as a judge, or to a genius in the field of the invention. Rather, the question is whether or not the invention would have been obvious to a person of ordinary skill in the field of the invention.

In deciding obviousness, you must avoid using hindsight; that is you should not consider what is known today or what was learned from the teachings of the patent. You should not use the patent as a road map for selecting and combining items of prior art. You must put yourself in the place of a person of ordinary skill at the time the invention was made.

You must also keep in mind that the test for obviousness is not whether or not it would have been obvious to try to make the invention, but rather whether or not the invention would have been obvious to a person of ordinary skill in the inventor's field at the time the invention was made.

In determining whether or not these claims would have been obvious, you should make the following determinations:

First, what is the scope and content of the prior art?

Second, what differences, if any, are there between the invention of the claims of the patents and the prior art?

Third, what was the level of ordinary skill in the art at the time the invention was made?

Fourth, are there any objective indications of non-obviousness?

Against this background, you must decide whether or not the inventions covered by the patent claims would have been obvious.

I will now describe in more detail the specific determinations you must make in deciding whether or not the claimed invention would have been obvious.

The Scope and Content of the Prior Art

Determining the scope and content of the prior art means that you should determine what is disclosed in the prior art relied on by Bosch. You must decide whether this prior art was reasonably relevant to the particular problem the inventor faced in making the invention covered by the patent claims. Such relevant prior art includes prior art in the field of the invention, and also prior art from other fields that a person of ordinary skill would look to when attempting to solve the problem.

Differences Between the Invention of the Claims and the Prior Art

In determining the differences between the invention covered by the patent claims and the prior art, you should not look at the individual differences in isolation. You must consider the claimed invention as a whole and determine whether or not it would have been obvious in light of all of the prior art.

In deciding whether to combine what is described in various items of prior art, you should keep in mind that there must be some motivation or suggestion for a skilled person to make the combination covered by the patent claims. You should also consider whether or not the prior art “teaches away” from the invention covered by the patent claims. The question to be answered is: Would someone reading the prior art be discouraged from following the path taken by the inventor?

Level of Ordinary Skill

Obviousness is determined from the perspective of a person of ordinary skill in the art. This person is presumed to know all of the prior art, not just what the inventor may have known. When faced with a problem, this ordinary skilled person is able to apply his or her experience and ability to the problem and also to look to any available prior art to help solve the problem.

Factors to consider in determining the level of ordinary skill in the art include the educational level and experience of people working in the field, the types of problems faced by workers in the art and the solution found to those problems, and the sophistication of the technology in the field.

Objective Indications Concerning Obviousness

You must also consider what are referred to as objective indications of non-obviousness. Some of these indications of non-obviousness are:

1. Commercial success of products covered by the patent claims.
2. A long-felt need for the invention.
3. Failed attempts by others to make the invention.
4. Copying of the invention by others in the field.
5. Unexpected results achieved by the invention.
6. Praise of the invention by the infringer or others in the field.
7. The taking of licenses under the patent by others.
8. Expressions of surprise by experts and those skilled in the art at the making of the invention.
9. The patentee proceeded contrary to the accepted wisdom of the prior art.

The presence of any of these objective indications may suggest that the invention was not obvious. These objective indications are only relevant to obviousness if there is a connection, or nexus, between them and the invention covered by the patent claims. For example, commercial success is relevant to obviousness only if the success of the product is related to a feature of the patent claims. If the commercial success is the result of something else such as innovative marketing, and not to a patented feature, then you should not consider it to be an indication of non-obviousness.

Factors Indicating Non-Obviousness

Commercial Success

An infringer's commercial success can be evidence of commercial success of the patented invention. To prove this, Black & Decker would have to satisfy you that there is infringement, and also that there is a causal connection between the evidence showing the commercial success and the merits of the claimed invention. For example, if you conclude that commercial success is due to advertising, promotion, salesmanship or the like, or to features of the product other than those claimed in the patent in suit, rather than to the claimed invention, then it is not established that commercial success has a relation to the invention itself. If, however, you were to find that the inventions of the patent in suit achieved commercial success and that the merits of the inventions caused the commercial success this would tend to indicate that the inventions were not obvious.

Long-Felt Need

Another factor you should consider is whether or not Black & Decker has shown a long felt need in the art which was satisfied by the invention of the '059 and 925 patents. To prove this, Black & Decker must show that it was the merits of the claimed invention that satisfied a long-felt need. For example, if you were to conclude that there was no long-felt need or that the long-felt need was satisfied due to advances in unrelated technology, then Black & Decker would not have carried its burden of proof on this issue. If, however, you were to find that the merits of the invention solved a long-felt need, this would tend to indicate that the invention was not obvious.

Copying

Another factor you should consider is whether or not Black & Decker has shown copying by others of the invention claimed in the '059 and '925 patents. If you were to find that others copied the invention because of its merits this would tend to indicate that the invention was not obvious.

Acceptance of License

Another factor you should consider is whether or not Black & Decker has shown that others have accepted licenses under the '059 and '925 patents. To prove this, Black & Decker must show that others agreed to licenses because of the merits of the claimed invention. For example, if the others accepted licenses due to factors such as [the cost of litigation, or the low cost of the license), then it has not been established that the acceptance of licenses was due to the merits of the invention itself. If, however, you were to find that others took licenses as a result of the merits of the claimed invention, this would tend to indicate that the invention was not obvious.

Obvious to Try Is Not “Obviousness”

In deciding whether the prior art suggests the combinations recited in the asserted claims of the patents in suit, you are instructed that if the prior art merely discloses numerous possible combinations but gives no direction as to which of those of many choices is likely to be successful, this does not constitute a suggestion of the claimed combination. Similarly, if the prior art merely discloses that it would be obvious to explore a new technology or general approach that seemed to be a promising field of experimentation, this would not constitute a suggestion of the claimed combination.

On the other hand, for the prior art to "suggest" the claimed invention, it is not necessary that one of ordinary skill in the pertinent art, looking at the prior art, could predict with certainty that the claimed invention would be successful. Rather, it is sufficient that a person of ordinary skill in the art, looking at the prior art, would have a reasonable expectation that the claimed invention would achieve the desired result.

Determination of Obviousness

Bosch contends that the invention claimed in each of the asserted claims of the patents in suit would have been obvious to a person of ordinary skill in the field of the invention at the time the invention was made in light of the combinations of alleged “prior art” items listed below. If you find that Bosch has proved obviousness of any asserted claim by the highly probable standard, then you must find that particular claim is invalid for obviousness.

Damages

I have now instructed you as to the law governing Black & Decker's claims of patent infringement and Bosch's claims of invalidity. If you find that Bosch has infringed valid claims of the '059 and '925 patents, then you must determine what damages Bosch must pay to Black & Decker for that infringement. If, on the other hand, you find that Bosch has not infringed a valid claim of the '059 and '925 patents, then Black & Decker is not entitled to any damages, and you should not make any findings about damages.

The fact that I am instructing you about damages does not mean that Black & Decker is, or is not, entitled to recover damages. I am expressing no opinion one way or the other. These instructions are only to guide you in case you find that Bosch infringed valid claims of the '059 and '925 patents.

Compensatory Patent Damages in General

If you find that any claim of the '059 and '925 patents is both valid and infringed, then the patent owner is entitled to damages adequate to compensate for the infringement. These damages may not be less than what a reasonable royalty would be for the use made of the invention by the infringer. In determining damages, you must decide how much financial harm the patent owner has suffered by reason of the infringement. You must decide the amount of money that the patent owner would have made had the infringer not infringed.

Damages are only to compensate Black & Decker, to put Black & Decker into the position it would have been in if Bosch had not infringed. You may not add anything to the amount of damages to punish Bosch, or to set an example.

Notice Requirement For Patents With Product Claims

Black & Decker can recover damages for infringement that occurred only after Black & Decker gave notice of its patent rights. It is Black & Decker's burden to prove by the more probable than not standard that it gave notice.

Black & Decker can give notice in two ways. The first way is to give notice to the public in general. Black & Decker can do this by placing the word "patent" or the abbreviation "PAT" with the number of the '059 or '925 patent on substantially all the products it sold that included the patented invention. If Black & Decker did not mark substantially all of their products that use the patented invention with the patent number, then Black & Decker did not provide notice in this way.

A second way Black & Decker can provide notice of its patent is to tell Bosch that it is infringing the '059 and '925 patents and to identify Bosch's radio that were infringing. This type of notice is effective from the time it is given.

As I said, Black & Decker may recover damages only from the time it gave notice of its patent. If you find that Black & Decker did not do either of these before beginning this lawsuit, then Black & Decker can only recover damages for infringement that occurred after it sued Bosch on December 8, 2004.

Two Types of Damages – Lost Profits and Reasonable Royalty

There are two types of damages for patent infringement.

The first type of patent damages is lost profits. Briefly, lost profits damages compensate the patent owner for the additional profits that it would have made if the accused infringer had not infringed. You may hear this referred to as the “but for” test. I will discuss lost profits in more detail shortly.

The second type of patent damages is called reasonable royalty. I will also discuss reasonable royalty later in more detail. Generally, a reasonable royalty is defined by the patent laws as the reasonable amount that someone wanting to use the patented invention should expect to pay to the patent owner and the owner should expect to receive. A reasonable royalty is the minimum amount of damages that a patent owner may recover.

Lost Profits, Types and Burden of Proof

I will first instruct you about lost profit damages. Simply stated, lost profit damages are the profits Black & Decker lost because of the infringement. They are not the profits Bosch made.

Black & Decker says that it lost profits because Bosch's infringement took away sales that Black & Decker would have made. This is called lost profits due to lost sales.

Black & Decker has the burden to show that it was more probable than not that it would have made additional profits if Bosch had not infringed.

Remember, if you find Black & Decker did not prove infringement of a valid patent claim, there can be no damages of any kind.

Lost Sales

Lost sales are those sales the patent owner lost because of the infringement.

To prove that it lost sales, Black & Decker must prove that it was more probable than not that it would have made additional sales if Bosch had not made the sales you find to be an infringement.

Black & Decker may receive damages for lost sales only on those products that compete with Bosch's products that you find to infringe, and that are functionally part of the competing product. Black & Decker may not receive lost profit damages for other products or services that might be sold along with the competing product for convenience or business advantage, but that are not functionally part of the competing product.

Manufacturing and Marketing Ability

In deciding whether Black & Decker lost sales, you should consider whether or not Black & Decker has proved that it had the manufacturing capacity and the marketing capability to make the sales it says it lost.

Black & Decker must prove that it was more probable than not that it could have made, or could have had someone else make for it, the additional products it says it could have sold but for the infringement.

Black & Decker also must prove that it had the capability to market and sell the additional products.

Absence of Acceptable Non-Infringing Substitutes

In determining whether Black & Decker lost sales due to infringement, you must consider whether or not, if Bosch's infringing product were not available, some or all of the people who bought from Bosch would have bought a different, non-infringing product from Bosch or from somebody else, rather than buy from Black & Decker.

In deciding whether or not people who bought from Bosch would have bought a non-infringing product, you should consider whether or not there was such a demand for the patented aspects of the infringing product that purchasers would not have bought a non-infringing product.

Amount of Lost Profits

If Black & Decker has proved that it lost profits due to infringement by Bosch, then you are to find the amount of profits that Black & Decker lost. Black & Decker must prove the amount of its lost profits to a reasonable probability.

The amount of lost profits damages should not include amounts that are merely speculation. However, if the reason that Black & Decker has difficulty proving the amount of its lost profits is because Bosch did not keep records or destroyed records, such as records of its sales, then you should resolve doubts as to the amount against Bosch.

Reasonable Royalty

Black & Decker is also asking for damages in the amount of a reasonable royalty as an alternative to lost profits. If you find that Black & Decker has proved lost profits for all of Bosch's infringing sales or activities, then the damages award to Black & Decker should be those lost profits.

If you find that Black & Decker has not proved that it should recover lost profits, or that it has only proved lost profits for some of Bosch's infringing sales or activities, then for those infringing sales or activities for which you do not award lost profits, you should determine the amount Black & Decker has proved to be a reasonable royalty.

What is a Reasonable Royalty?

A royalty is an amount of money that someone pays a patent owner to be able to use the patented invention.

A reasonable royalty is the royalty that would be reasonable for the infringer to pay and for the patent owner to accept for use of a patent that they both know is valid and that the infringer wants to use.

You are to decide what a reasonable royalty would be, based on circumstances as of the time just before Bosch began using the patented inventions. You should assume that Bosch and Black & Decker knew at that time such things as the level of sales and profits that Bosch would make using the inventions. You should also assume that Black & Decker was willing to grant Bosch a license to use the patented inventions and that Bosch was willing to pay for that license.

In deciding what is a reasonable royalty, you may consider the factors that Black & Decker and Bosch would consider in setting the amount Bosch should pay.

I will list for you a number of factors you may consider. This is not every possible factor, but it will give an idea of the kinds of things to consider in setting a reasonable royalty.

1. Whether the patent owner had established a royalty for the patented inventions, for example, by granting other licenses at that royalty. You should remember, however, that an established royalty may have been before the patents were determined to be valid and infringed in court, and therefore, may not be as much as it would be if both the patent owner and the party wanting to use the patents knew they were valid.
2. Royalties paid by Bosch or by others for patents comparable to the '059 and '925 patents.
3. Whether or not Black & Decker had a policy of licensing or not licensing the patents.
4. Whether or not Black & Decker and Bosch are competitors.
5. Whether being able to use the patented inventions helps in making sales of other products.
6. The profitability of the products made using the patents, and whether or not it is commercially successful or popular.
7. The advantages and benefits of using the patented inventions over products not claimed in the '059 and '925 patents.
8. The extent of Bosch's use of the patented inventions and the value of that use to Bosch.
9. Whether or not there is a portion or percentage of the profit or selling price that is

customarily paid for use of patented inventions comparable to the inventions claimed in the '059 and '925 patents.

10. The portion of the profit that is due to the patented inventions, as compared to the portion of the profit due to other factors, such as unpatented elements or unpatented manufacturing processes, or features or improvements developed by Bosch.
11. Expert opinions as to what would be a reasonable royalty.

Total Damages

After making your findings concerning lost profits damages and reasonable royalty damages, you should arrive at a total damages amount to award to Black & Decker. This amount should include the amount of lost profits damages Black & Decker has proved. It also should include the reasonable royalty damages for that portion of the infringement for which Black & Decker did not prove lost profits damages.

Verdict Form/Selection of Foreperson

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over all your deliberations and will be your representative here in court. A verdict form has been prepared for you.

Take this form to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the applicable forms, and each of you will sign them.

Rendering a Verdict

The verdict must represent the considered judgment of each juror. Your verdict, whatever it is, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all of the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror.

You are impartial judges of the facts.

Communication With The Court

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing signed by the foreperson or, if he or she is unwilling to do so, by some other juror and given to the marshal or to my courtroom deputy.

I caution you, however, with regard to any message or question you might send, that you should never state or specify your numerical division at the time.